

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5392 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

KANTIBHAI A PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

Heard Mr. H.C. Rawal, learned counsel appearing
for the petitioner. In the present case the respondent
Shri. Kantibhai A Patel is the driver under the
petitioner Gujarat State Road Transport Corporation.

While the petitioner was on duty as driver in bus No. GRR-8397 on 3-5-82, he was driving the bus on route from Sidhpur to Umra. The bus met with an accident causing injuries to one pedestrian and for this criminal proceedings was started against the respondent, and he was issued a chargesheet on 20-8-82. The departmental inquiry was held in accordance with the requirements of law and after completion of departmental inquiry, the Inquiry Officer found that the charges framed against the respondent was proved. The disciplinary authority after taking in to consideration the inquiry report as well as after hearing the respondent, imposed penalty of reducing his pay from Rs.264/- to Rs.224/-, thereby reducing Rs.40/- per month in the salary. Having aggrieved by the order of penalty the respondent preferred an appeal to the Divisional Controller, who is the appellate authority and said appellate authority by an order dated 18-2-1985 reduced the penalty and directed that three increments of the respondent will be withheld with cumulative effect. The respondent preferred Second Appeal which was rejected by the Corporation by order dated 4-9-1986. Having felt aggrieved by the order of the appellate authority, respondent moved the Industrial Court. The dispute was referred to the Industrial Tribunal, Ahmedabad and the reference was registered as (I.T.) No. 16/88. The Industrial Tribunal after hearing the parties passed an order dated 23-1-1989 setting aside the order of penalty imposed on the respondent. Having felt aggrieved by the order of the Tribunal passed on 23-1-1989 in Reference (I.T.) No. 16/88, the Corporation has filed the present petition for setting aside the judgment & award of the Industrial Tribunal.

2. Mr. H.C. Rawal, learned counsel appearing on behalf of the petitioner submitted that in the departmental proceedings the respondent did not challenge the legality or otherwise of the proceedings before the disciplinary authority. Respondent workman was charged for misconduct of causing accident and injuring a pedestrian. After the accident criminal case was also instituted against the respondent in the Court of Judicial Magistrate First Class at Sidhpur. After the trial the respondent was acquitted from the case by the JMFC, Sidhpur. Learned counsel for the petitioner submitted that the order of acquittal of the respondent by the criminal Court would not prevent the authorities to continue with the departmental proceedings. Learned counsel consequently submitted that the Tribunal has committed an error in coming to the conclusion that the charges levelled against the respondent in the departmental proceedings cannot be held to be good in

view of the acquittal of the respondent by the criminal case. I agree with the submissions of learned counsel for the petitioner. In a criminal proceeding the Court requires strict proof before convicting and sentencing an accused in a case. In the instant case the respondent was charged for negligence and causing accident which amounts to misconduct on the part of the respondent in the criminal trial. The prosecution must satisfy the Court that there was rash and negligent driving on the part of the driver, and on which sentence can be secured. But in the departmental proceedings such strict proof is not required. It is evident that the driver has met with an accident and injured a pedestrian. This conduct in a departmental proceeding can very well be established about the misconduct of the driver. The misconduct proved in a departmental proceeding may not be sufficient for convicting and sentencing a person in a criminal case, but to prove the misconduct in a departmental proceeding the evidence that are required are not of the same standard that are required in a criminal proceeding. Therefore, I am of the view that the Tribunal has committed an error in holding that since the respondent has been acquitted from the criminal charges, he should not have been penalised in the departmental proceedings.

3. After going through the judgment & award passed by the Tribunal, it appears that on this ground alone the Tribunal has quashed the order of penalty imposed by the petitioner Corporation. In view of the observations made above, I am of the view that the Tribunal has committed an error in holding that since the respondent has been acquitted from criminal trial, he cannot be punished in departmental proceeding. This is an error committed by the Tribunal, and therefore the judgment & award passed by the Tribunal cannot be held to be a correct one. However, in the instant case it appears that the Corporation withheld three annual increments of the respondent with cumulative effect. But having regard to the offence committed by the respondent, I am of the view that the punishment imposed is slightly disproportionate to the offence alleged to have been committed by the respondent. Therefore, I am of the view that withholding of two increments with cumulative effect will meet the interest of justice and accordingly the order of penalty is modified to the extent that two increments of respondent workman be withheld with cumulative effect.

4. With the aforesaid observations and directions, present petition is partly allowed. Rule made absolute to the aforesaid extent. However, I make no order as to costs.

/vgn.